

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

May 21, 2020

Lyle W. Cayce
Clerk

No. 19-10958
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MIGUEL ANGEL BAEZ-CASTILLO,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-58-1

Before HIGGINBOTHAM, HO, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Miguel Angel Baez-Castillo appeals his conviction and 60-month sentence for illegal presence in the United States under 8 U.S.C. § 1326(b)(1). He asserts that the fact of a prior felony conviction was an element of the offense that was not alleged in the indictment or admitted by him as required by the Sixth Amendment and historical common-law practices. He concedes that the issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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224 (1998). Baez-Castillo contends, however, that the Supreme Court has not considered the historical common law approach to pleading prior convictions since *Almendarez-Torres*, although its Sixth Amendment jurisprudence subsequently evolved to apply the common law practice of defining elements in *Apprendi v. New Jersey*, 530 U.S. 466, 477-83 (2000). He seeks to preserve for further review this historical challenge to treating prior convictions as sentencing factors rather than elements of the offense.

The Government has moved for summary affirmance or, alternatively, an extension of time to file a brief. Because Baez-Castillo's argument is foreclosed, summary affirmance is appropriate. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). The Government's motion for summary affirmance is GRANTED, and the judgment is AFFIRMED. The Government's alternative motion for an extension of time to file a brief is DENIED.